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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/966,423	09/28/2001	Colin C. Felton	077650-0107	6383

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EXAMINER	
CHAPMAN, JEANETTE E	
ART UNIT	PAPER NUMBER

3635

DATE MAILED: 02/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Offic Action Summary	Application N . 09/966,423	Applicant(s) FELTON, COLIN
	Examiner Chapman E Jeanette	Art Unit 3635
<i>-- Th MAILING DATE of this communication appears on the cover sheet with th correspondence address --</i>		
Period f r Reply		
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.		
<ul style="list-style-type: none"> - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely. - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). - Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b). 		
Status		
1) <input checked="" type="checkbox"/> Responsive to communication(s) filed on <u>28 September 2001</u> .		
2a) <input type="checkbox"/> This action is FINAL. 2b) <input checked="" type="checkbox"/> This action is non-final.		
3) <input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.		
Disp sition of Claims		
4) <input checked="" type="checkbox"/> Claim(s) <u>1-18</u> is/are pending in the application.		
4a) Of the above claim(s) <u>17 and 18</u> is/are withdrawn from consideration.		
5) <input type="checkbox"/> Claim(s) _____ is/are allowed.		
6) <input checked="" type="checkbox"/> Claim(s) <u>1-16</u> is/are rejected.		
7) <input type="checkbox"/> Claim(s) _____ is/are objected to.		
8) <input type="checkbox"/> Claim(s) _____ are subject to restriction and/or election requirement.		
Application Papers		
9) <input type="checkbox"/> The specification is objected to by the Examiner.		
10) <input type="checkbox"/> The drawing(s) filed on _____ is/are: a) <input type="checkbox"/> accepted or b) <input type="checkbox"/> objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).		
11) <input type="checkbox"/> The proposed drawing correction filed on _____ is: a) <input type="checkbox"/> approved b) <input type="checkbox"/> disapproved by the Examiner. If approved, corrected drawings are required in reply to this Office action.		
12) <input type="checkbox"/> The oath or declaration is objected to by the Examiner.		
Priority under 35 U.S.C. §§ 119 and 120		
13) <input type="checkbox"/> Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) <input type="checkbox"/> All b) <input type="checkbox"/> Some * c) <input type="checkbox"/> None of: 1. <input type="checkbox"/> Certified copies of the priority documents have been received. 2. <input type="checkbox"/> Certified copies of the priority documents have been received in Application No. _____. 3. <input type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received.		
14) <input type="checkbox"/> Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application). a) <input type="checkbox"/> The translation of the foreign language provisional application has been received.		
15) <input type="checkbox"/> Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.		
Attachment(s)		
1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)		
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)		
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2 .		
4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s) _____ .		
5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)		
6) <input type="checkbox"/> Other: _____ .		

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-16 , drawn to The construction panel, classified in class 52, subclass 314.
- II. Claims 17-18, drawn to The method of manufacturing a construction panel, classified in class 52, subclass 741.1.

The inventions are distinct, each from the other because of the following reasons:

Inventions Group I and Group II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, the method presented in Group II is not mandatory to construct the panel of Group I. The panel could be constructed from a laminated sheet instead of a mould or by any one of the other processes disclosed in the cited references.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

During a telephone conversation with Mr. Robert Yong on 2/21/03 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-16.

Affirmation of this election must be made by applicant in replying to this Office action.

Claims 17-18 are withdrawn from further consideration by the examiner, 37

CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnston (2096968). Johnston discloses a construction panel in figure V having upper and lower portions. The lower portion comprises a plurality of vertically extending member which are of an appropriate shape and size to provide the appearance of a shingle, shake or tile.

The material of construction has been deemed a matter of choice. One of ordinary skill in the art would have appreciated all of the materials available for use and would have selected any one which fulfilled the intended purpose of his panel.

The plurality of members are of non-uniform widths and lengths and lower edges. The lower portion of the panel comprises a textured surface. The textured surface may replicate wood, clay, ceramic, slate tile and combinations thereof; see column 1, the first 2 paragraphs. The fiber is of a mineral and hence of a natural plant.

Claims 7-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnston (2096968). Johnston lacks all of the materials of construction though, such

selections have been deemed a matter of choice. One of ordinary skill in the art would have appreciated all of the materials available for use and would have selected any one which fulfilled the intended purpose of his panel. Nevertheless, Tanaka and Fash et al discloses the materials of construction. It would have been obvious to construct the panel of any of the known materials used today as shown by the two secondary references in order to fulfill the intended purposes and function of the construction panel.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chapman E Jeanette whose telephone number is 703-308-1310. The examiner can normally be reached on Mon.-Fri, 8:30-6:00, every other fri. off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Friedman Carl can be reached on 703-308-0839. The fax phone numbers for the organization where this application or proceeding is assigned are 305-7687 for regular communications and 305-3597 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

jec
February 24, 2003


Jeanette Chapman
Primary Examiner